

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>AAA-003</b>									
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on _____  Signature _____  Typed or printed name _____	Application Number <b>09/990,402</b>	Filed <b>November 21, 2001</b>									
	First Named Inventor <b>William K. Slate II</b>										
	Art Unit <b>3621</b>	Examiner <b>Evens J. Augustin</b>									
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding-bottom: 10px;"><input type="checkbox"/> applicant/inventor.</td><td style="width: 50%; vertical-align: top; padding-bottom: 10px; text-align: right;">/Michael J. Chasan/ _____ Signature</td></tr><tr><td style="vertical-align: top; padding-bottom: 10px;"><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td style="vertical-align: top; padding-bottom: 10px; text-align: right;">Michael J. Chasan _____ Typed or printed name</td></tr><tr><td style="vertical-align: top; padding-bottom: 10px;"><input checked="" type="checkbox"/> attorney or agent of record. Registration number <b>54,026</b></td><td style="vertical-align: top; padding-bottom: 10px; text-align: right;">(212) 596-9000 _____ Telephone number</td></tr><tr><td style="vertical-align: top; padding-bottom: 10px;"><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="vertical-align: top; padding-bottom: 10px; text-align: right;">February 9, 2009 _____ Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.	/Michael J. Chasan/ _____ Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Michael J. Chasan _____ Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <b>54,026</b>	(212) 596-9000 _____ Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	February 9, 2009 _____ Date
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<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.											

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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CONCISE ARGUMENT FOR WHICH REVIEW IS BEING REQUESTED

Summary of Office Action

Claims 1, 2, 4-30, 32-44, 60, 61, 63-89, 91-103, 119, 120, 122-148, 150-162 are pending in the application.\*

The Examiner has finally rejected claims 1, 2, 4-12, 15-30, 32-44, 60, 61, 63 71, 74-89, 91-103, 119, 120, 122-130, and 133-162 under 35 U.S.C. § 103(a) as being obvious over Israel et al. U.S. Patent 6,766,307 in view of Landry U.S. Patent Publication No. 2003/0014265. Claims 13, 14, 72, 73, 131, and 132 have been finally rejected under 35 U.S.C. § 103(a) as being obvious over Israel in view of Landry and in further view of Murray et al. U.S. Patent 5,023,851.

Applicants' Invention

Applicants' invention, as defined by the pending claims, is a method and systems for dispute management using a dispute management application. In accordance with the invention, there are four different types of users that access the dispute management application: a user that files a claim, a party against whom the user files the claims, a case manager user, and a neutral. The case manager is assigned to manage the dispute management process after the user files the claim against the party by guiding the user and the party through the dispute resolution process. The case manager is notified of the assignment and is provided with a plurality of dispute management features including the ability to select a neutral to facilitate the dispute resolution process. The selected

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\* The Office Action incorrectly identifies claims 3, 31, 62, 90, 121, and 149 as pending. However, these claims were cancelled in the Reply to Office Action dated May 12, 2005. Similarly, claims 13, 14, 72, 73, 131, and 132 are omitted from the listing of pending claims. However, these claims are pending as originally filed.

neutral is allowed to facilitate the dispute resolution process between the user and the party.

#### The Israel Reference

Israel refers to a non-judicial dispute resolution management system. Israel's system has three types of users: program users, program managers, and administrative personnel. Program managers and program users are both individuals at a company who are responsible for maintaining accounts with and managing disputes using the dispute resolution management system on behalf of the company. The program manager may manage the program user or may be the same individual as the program user. Administrative personnel administer the dispute resolution management system, but are not substantively involved in dispute resolution process. See Israel, col. 3, ll. 11-50 and col. 11, ll. 40-59.

#### The Landry Reference

Landry refers to an online dispute resolution system that has three types of users: the disputing parties (consumers and merchants), neutrals (arbitrators and mediators), and an system clerk. The system clerk is an administrative user that administers the system and monitors the system processes. See Landry, par. 30.

#### Clear Error in the Rejection

To make out a *prima facie* case of obviousness, the cited references must teach or suggest all the claim limitations of the rejected claim. MPEP § 2143. As applicants have argued in their previous replies, taken alone or in combination neither Israel nor Landry teaches or suggests a case manager user having all of the features recited by the current claims.

The Examiner contends that both the program manager of Israel and the system clerk of Landry are equivalent to applicants' claim manager and that in combination these two references show all of the elements of applicants' claims.

However, as applicants have previously argued, Israel's program manager and Landry's clerk are not equivalent to applicants' claim manager. Most specifically, applicants have demonstrated that neither Israel's program manager nor Landry's system clerk show or suggest selecting a neutral to facilitate dispute resolution between a user and another party.

In the final Office Action, the Examiner disagreed with applicants' position that Landry does not select a neutral party. The Examiner argued that the system clerk "makes a decision on accepting mediators and arbitrators (neutrals) into the system and enrolling these entities into the system." Office Action, p. 11. The Examiner then concluded that the system clerk "is very much involved in the selection process of neutrals into the system." *Id.* (emphasis added). However, enrolling or selecting neutrals "into the system", is not the same as selecting a neutral to facilitate dispute resolution between a user and another party.

Landry's system clerk initially screens and enrolls the mediators that will be used by the system. However, after this enrollment, the actual selection of mediators for a particular case is performed automatically by the ODR System Program and not by the system clerk. See Landry, paragraphs 61 and 62. Accordingly, Landry's clerk does not select a neutral for facilitating the dispute resolution process between the user and the party, as specified by applicants' claims.

Israel's program manager also does not select a neutral for facilitating the dispute resolution process between the user and the party. The program manager in a dispute represents the same party as the program user (i.e.,

they are the same individual or from the same company). It is clear that Israel's program manager cannot perform the role of applicants' case manager to guide adverse parties of a dispute through the process. Furthermore, because the program manager is a representative of one of the parties to the dispute, the program manager would not be allowed to select a neutral.

Therefore, Israel and Landry do not show or suggest a case manager that is allowed to select a neutral for facilitating the dispute resolution process between the user and the party, as specified by applicants' claims. Accordingly, even if the combination of Israel and Landry were proper, this combination still does not show or suggest all of the features of applicants' claims. That is clear error.

#### Conclusion

For the reasons set forth above, applicants respectfully submit that this application is in condition for allowance.

Panel review of the rejections based on Israel and Landry, and prompt allowance of this application, are respectfully requested.

Respectfully submitted,

/Michael J. Chasan/

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